

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HEALTH

In the Matter of the Administrative Penalty
Order Issued to American Property
Services, LLC

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION
UPON DEFAULT**

This matter came on for a telephone prehearing conference before Administrative Law Judge Laura Sue Schlatter on May 28, 2014 at 11:00 a.m.

David F. Strohkirch, Assistant Attorney General, appeared on behalf of the Minnesota Department of Health (Department). There was no appearance by, or on behalf of, American Property Services, LLC or its representative, Jillian Smith (Respondent).

STATEMENT OF THE ISSUES

1. Whether Respondent violated the statutes and rules governing asbestos abatement as set forth in the allegations as pages 2 through 6 of the Notice and Order for Hearing and Prehearing Conference (NOH) and pages 1 through 3 of the Administrative Penalty Order dated March 18, 2014 (NOH, Exhibit 1).¹

2. Whether the Commissioner is authorized to take enforcement action against Respondent for violations of the Act using remedies available pursuant to Minn. Stat. §§ 144.989 through 144.993.

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that Respondent is in default and recommends that the allegations in the Notice and Order for Prehearing Conference and Hearing be accepted as true and deemed proven.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

¹ See Minn. Stat. §§ 326.70 to 326.81 and Minn. R. 4620.300 to 4620.3724.

FINDINGS OF FACT

1. On May 14, 2014, a Notice and Order for Prehearing Conference and Hearing (Notice and Order for Hearing) in this matter was mailed to Respondent at its last known address.²

2. The Notice and Order for Hearing indicated that a Prehearing Conference would be held in this matter on May 28, 2014, at 11:00 a.m. by telephone.³

3. The Notice and Order for Hearing was returned to the Office of the Attorney General on May 19, 2014. The Attorney General's office obtained a corrected address for Respondent from the website of the Minnesota Secretary of State and re-sent the Notice and Order for Hearing on May 20, 2014.⁴

4. The second mailing of the Notice and Order for Hearing was not returned to the Office of the Attorney General.⁵

5. In conformity with Minn. R. 1400.5700, the Notice and Order for Hearing requires that any party intending to "appear at the prehearing conference and hearing must file a Notice of Appearance form and return it to the Administrative Law Judge within 20 days of the date of service" of the Notice and Order for Hearing.⁶

6. In conformity with Minn. R. 1400.6000, the Notice and Order for Hearing in this matter also includes the following statement:

Respondent's failure to appear at the prehearing conference, settlement conference, or hearing may result in a finding that the Respondent is in default, that the allegations contained in this Notice and Order for Prehearing Conference and Hearing may be accepted as true, and its proposed action may be upheld.

7. Respondent did not file a Notice of Appearance with the undersigned.

8. No one appeared at the May 28, 2014, Prehearing Conference on behalf of Respondent. No request was made for a continuance, nor was any communication received by the undersigned from Respondent prior to the May 28, 2014 Prehearing Conference.

9. Respondent's failure to appear at the Prehearing Conference was without consent of the Administrative Law Judge.

10. Because Respondent failed to appear at the Prehearing Conference, Respondent is in default.

² See Attachment A at Affidavit of Service, signed by Karen Janus, May 14, 2014.

³ *Id.* at 1.

⁴ Statement of Assistant Attorney General on Prehearing Conference Record.

⁵ *Id.*

⁶ *Id.* at .

11. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice and Order for Hearing, a copy of which is attached as Attachment A, are taken as true, deemed proven without further evidence, and incorporated by reference into these Findings of Fact.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Minnesota Department of Health and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 144.991.

2. The Respondent received timely and proper notice of the Prehearing Conference in this matter when the Minnesota Department of Health sent the Notice and Order for Prehearing Conference and Hearing to its last known address and re-sent the Notice and Order for Prehearing Conference and Hearing to a corrected address.

3. The Minnesota Department of Health has complied with all relevant procedural requirements of statute and rule.

4. Under Minn. R. 1400.6000, the Respondent is in default as a result of its failure to appear at the scheduled prehearing conference.

5. Under Minn. R. 1400.6000, when a party defaults by failing to appear at a prehearing conference without the prior consent of the judge, the allegations and the issues set out in the Notice and Order for Prehearing Conference and Hearing may be taken as true and deemed proved. The Administrative Law Judge therefore deems the allegations to be true.

6. Minnesota Statutes section 144.99 provides that the Minnesota Department of Health may discipline a licensee who engages in conduct that violates the rules or law applicable to a licensee.

7. The Department has grounds to take disciplinary action against the Respondent's license based upon the allegations set forth in the Notice and Order for Hearing.

8. An order by the Department taking disciplinary action against the Respondent's license is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner take reasonable and appropriate disciplinary action against American Property Services.

Dated: June 13, 2014

s/LauraSue Schlatter

LAURASUE SCHLATTER
Administrative Law Judge

Reported: Default

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Health will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions of Law, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Edward Ehlinger, Commissioner, Minnesota Department of Health, 85 East Seventh Place, P.O. Box 64975, St. Paul, MN 55164, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.